

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF SAINT CHARLES, MISSOURI

These Comments are filed by the City of Saint Charles, Missouri, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Saint Charles believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Saint Charles has a population of sixty thousand three hundred twenty-one (60,321). Charter Communications is the franchised cable provider. Our community has negotiated two cable franchises since 1978 along with four (4) franchise transfers.

Our Current Franchise

General: Our current franchise became effective on June 20, 2001, and expires on June 19, 2008. Although our franchise provides for an extension through 2011, under the statutory timeline laid out in the Federal Cable Act, the cable operator must notify the local franchising authority within the first six (6) months of the thirty-six (36) month period prior to the expiration date of the franchise to request renewal. As a result, at this time we are currently pursuing both the extension alternative and operating under the statutory rules for the Federal formal renewal process.

Fees: Our franchise requires the cable operator to pay a franchise fee to the City in the amount of five percent (5%) of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. Franchise fees paid to the City of Saint Charles are required by our City's Ordinances (i.e., local legislation) to be expended by the City for cable T.V. related purposes, and provide for local regulation, legal costs for franchise enforcement, franchise transfer and

franchise renewal and other functions that ensure our residents are appropriately served by the cable operator as well as to provide for operation of the City's Government Access Channel.

PEG Channels: We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system: The Community Needs Assessment conducted during the franchise renewal process showed almost no interest in Public access; Saint Charles City currently has no channels (or capacity) devoted to public access. The Assessment process showed sufficient interest for the City to require one (1) channel devoted to Educational access to be programmed by Lindenwood University, located in the City. That channel recently converted to a County-wide higher education access Channel, now operated under authorization of the County of St. Charles rather than the City of Saint Charles. One (1) channel is devoted to Government access by the City.

Our franchise requires that our Government channel be supported in the following ways by the cable operator: The 2001 franchise agreement required a Fifty Thousand dollar (\$50,000) capital grant to provide equipment improvements for the City's Government Access Channel. In addition, a supplemental grant amounting to Sixty-Three Thousand Three Hundred Ninety-Seven dollars and Twelve cents (\$63,397.12) is being provided for the same purpose, in the current year. The franchising process provides an opportunity to discuss, negotiate and agree on specific support and the rationales for it that are mutually beneficial to both the local franchising authority and the operator.

Emergency Communications on PEG: The Commission should be aware that Saint Charles, like many other communities, uses its Government access channel to enhance citizen participation in local government; but, also, depends on the channel for essential emergency communications and homeland security functions. It is our only means of communicating directly with our residents, instantly, under the sole control of the City.

We use our government channel for such emergency communications. For example, we are located on the banks of the Missouri River, near the confluence with the Mississippi River, which sometimes floods areas of the City. In 1993, portions of the City were inundated and most of the surrounding County of St. Charles was under water. Our City used its government channel to provide specific information to residents, for example, about which streets were flooded, which were passable, detours to get to specific locations while avoiding flooded streets, and the like. No radio or TV station or other entity provides the detail of information that the City Channel does, let alone on a real time basis. This Commission must understand that this information is not only helpful, but is essential to the health and safety of our residents, by indicating, for example, how during the flood residents could safely access medical facilities for emergency care and reach locations where State and Federal social service agencies were operating. Other uses for public safety purposes have included carriage of boil water and water conservation orders and winter weather advisories.

For these types of reasons, ensuring the presence of such a channel, funding for it, and contractual specifics for its continued, efficient operation are essential in the franchising process.

PEG Funding: It is especially important for the future of access programming that provision for PEG capital support be maintained. The Congress and the Commission have required that broadcast television must migrate to digital transmission within several years, and have encouraged the development of new television standards that provide higher quality pictures. Viewers want all the channels they receive to have similar high viewing quality, bad looking pictures and bad sound cause complaints and better looking pictures with decent sound are required. The migration to high-definition television (HDTV) will require access channels to upgrade their production capabilities or be left as an unwatchable backwater, mired in the 1970s, with more and more complaints from viewers who have purchased a Two Thousand Five Hundred dollar (\$2500) HDTV television and receive fuzzy, muddy, elongated pictures on their local access channels.

Given the cost of converting from NTSC to a HDTV standard, it will be virtually impossible for most public and government access channels to maintain operations and still withstand the capital cost of new, complete production system acquisition. How to allocate such costs should remain a topic of negotiation between service providers and local franchising authorities. We believe that any multi-channel video operator conducting business in the City should contribute to funding equipment necessary for satisfactory operation of PEG access channels. If (as is usually the case) the operator slightly increases the price of their service, to recover these costs, that insures that only subscribers who benefit from the channels pay for them. If paid for by the City, then residents who do not have cable service would be supporting channels they cannot view. The local political process provides a check on such costs.

Emergency Alerts: Our franchise contains the following requirements regarding emergency alerts: St. Charles County Emergency Management Agency having the ability to override all channels of the cable T.V. system is required by our franchise and may be activated by the City's Emergency Management Director, the Fire Chief, acting through the County agency. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency, affecting the whole county. However, because it is a county-wide system, the county system often will not carry alerts about items affecting only our City. These can be covered on our government channel.

Customer Service: Our franchise incorporates customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. With minor variations, Saint Charles' Customer Service Standards are those promulgated by the Commission in 1993 (Report and Order on Customer Service Standards, FCC 93-145/MM Docket No. 92-263) as modified over time. Some additional provisions were included to address specific issues experienced in our community as identified in the franchise renewal Community Needs Assessment. For instance, many residents were not adequately notified of channel retiering by Telecommunications, Incorporated (TCI) when they were the franchisee, so additional provisions were included to ensure that the operator made reasonable attempts to meet that obligation to our residents. Saint Charles' Customer Service Standards also required cable technicians to try to contact residents who were at home, in their back yards, before abandoning a service call; to place door hangers on residences that were going to be affected by work on the rebuild of the cable system; and provided for a process to resolve any subscriber complaints received by the City. Customer

Service Standards have, in the past, been a separate ordinance which has now been incorporated in the Cable Television Master Regulatory Code, was formally codified in the City of Saint Charles Code of Ordinances and would apply to any cable provider.

Buildout: The 1978 original broadband telecommunications network franchise between the City of Saint Charles and First Capitol Cablevision required the cable system to be completed within thirty (30) months from the final passage and approval of the franchise ordinance, and required operations to begin within twelve (12) months. In the current era, our franchise requires the cable system upgrade rebuild to be completed, in the City, within twelve (12) months of passage of the franchise ordinance.

The franchise with Charter Communications requires that the cable operator provide service to any area within city limits with a density of ten (10) or more homes per quarter mile (as interpreted by the operator this is per strand quarter mile of cable). Saint Charles has experienced significant growth in residential development over many years, with almost eight thousand (8,000) new single-family and detached villa homes to be built over the next two (2) to three (3) years. Due to the vagaries of construction budgeting by cable companies early purchasers in some housing developments remain unserved by the operator for significant periods of time. Additionally, there were "interstitial" developments of three (3) to ten (10) homes that never met the extension requirements and were likely to never receive cable service. This was true during the term of the original franchise and was the subject of negotiation for renewal. In order to win renewal approval AT&T agreed to rebuild the cable system in a way to provide service to, roughly, two hundred (200) interstitial residences that would not have met the service extension terms of either the old or new franchises. Resolving intractable issues such as this is an additional benefit of the franchising process.

In order to ensure that our residents have access to current telecommunications technologies, our franchise makes system capabilities a "...material part...of the franchise renewal..." and provides for "...a periodic review relating to change in law, technology, and services..." AT&T, the cable operator in 2000, rebuilt the cable system in the City without the parties having concluded a renewal because after twenty-three (23) years in operation there were only about thirty (30) analog channels and about twenty-four (24) digital channels, using decrepit 400 MHz technology. Charter Communications currently operates a more or less state-of-the-art 900 MHz hybrid fiber-to-the-node/coax broadband system and provides an array of services, including high speed internet service, video-on-demand and telephone services to customers.

Competitive Provider: Our franchise contains a provision which outlines a process for determining whether a competitive provider should be granted a franchise which includes requirements for a public hearing, for a written report of the City's decision, and specifies component considerations to assess whether a competitors' proposal is in the public interest and other requirements. Section 111.22 of the Master Regulatory Code - GRANT OF ADDITIONAL FRANCHISE AND COMPETING SERVICE is attached as Exhibit 1.

Insurance/Bonds: Our franchise contains the following insurance and bonding requirements: Combined Single Limit – Bodily and Personal Injury and Property Damage coverage of \$1 million per occurrence/\$3 million aggregate is required. Additionally, State

Workers' Compensation Insurance for the operator's employees is required, and the grantee is required to indemnify the City. An initial performance bond of One Hundred Thousand dollars (\$100,000) was required while the system upgrade construction was occurring; the performance bond was reduced to not less than Fifteen Thousand dollars (\$15,000) during the remainder of the franchise term.

Rights of Way: The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Generally, users are required by Ordinance to obtain a permit from the appropriate municipal office before it may access the public rights of way. The City's permit application collects information about location and scope of work, length of time anticipated for the project, and notes any street crossings affected. Although a fee is required to be submitted with the completed permit application form (the fee structure in the Ordinance includes: a) Twenty-Five dollar (\$25) non-refundable permit fee and varying amounts depending on existing construction material; b) Thirty-Five dollars (\$35) per cubic yard of flowable fill backfill, c) Twenty dollars (\$20) per square yard of asphalt surface, d) Twenty-five dollars (\$25) per square yard of concrete surface, and, e) Three dollars (\$3) per square foot of sidewalk) both the telephone company and the cable provider are exempt from this fee. Work in public easements is supervised by the City Engineer and required to cause as little interference with the public and other users as possible. Any disturbed or damaged areas must be repaired or replaced to their previous condition which is monitored by City Inspectors and a performance bond or other guarantee may be required.

Enforcement: The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: a variety of reporting requirements to establish the status of the Cable System are specified along with right of inspection of all appropriate documentation held by the operator. The combination of the required performance bond and the formal Customer Service Dispute Resolution process, both noted previously, provides an organized and meaningful enforcement procedure. However, it should be understood that the periodic requirement for an operator to apply for renewal and review their operations in the City in order to win franchise renewal or extension is one of the most effective enforcement mechanisms available to local residents, through their local franchising authority.

The Franchising Process

Contract: Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Change in Laws: Our current franchise provides that significant changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated

as follows: In order to assure appropriate consideration under the franchise contract the City of Saint Charles incorporated a specific non-severability provision for the material aspects of the agreement. If there are significant changes made by court decision, federal law changes or preemptive rules adopted by an administrative body the franchise may be terminated and the Federal renewal process becomes effective. This provides a thirty-six month window within which to negotiate a new franchise that addresses the failure of consideration under the contract caused by the change. Informal renewal is always an option under Federal law, and mutually agreeable amendment, extension, or other alternative actions may be taken as appropriate.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Passage of an Ordinance by the City Council for the City of Saint Charles requires two readings of the proposed ordinance by title, separated by at least one week, and approval by a majority of the Council. Various actions under both City Ordinances and the City's Charter require public hearings. For instance, in determining whether to grant a competitive franchise our Master Regulatory Code requires that a public hearing be conducted to receive comment from interested parties on the impact of an additional franchise on the community.

Competitive Cable Systems

General: To ensure that the City of Saint Charles's position is absolutely clear...the City both endorses and desires competition in the provision of telecommunications services to the residents of our City. However, the residents of Saint Charles should not be required to accept any service provider, the resultant burden on public rights-of-way from that business and become an unwitting, unrepresented investor in any communications conglomerate without appropriate representation in resolving complex issues (i.e. restoration of damaged easements, billing disputes, equitable access to provider services), compensation for use of public property and oversight by local authorities. Without realistic local franchising authority the public interest, especially the interests of the economically disadvantaged, will be suppressed.

Experience with Competitive Providers: Saint Charles has had occasional experiences with the competitive environment in cable television and broadband. Spurred on by complaints from subscriber/residents the City actively sought competitors who could provide an alternative to the City's cable operators; First Capitol Cablevision, who built the initial system, Group W Cable which soon transferred the franchise to Telecommunications, Inc. (TCI), which was eventually absorbed by AT&T. Despite several attempts by both City Staff and elected officials over a period of about twelve years there was never any form of positive response.

Then, in 2000, while proceeding under the Federal renewal process with AT&T, Wide Open West (WOW) approached several cities in the area in an attempt to obtain competitive franchises to provide video, telephone and high speed internet services. Despite assurances that their financing was above reproach and their connections within the broadband and investment communities were trustworthy, the City remained skeptical about the company's ability to deliver the promised services and determined to move relatively deliberately.

WOW: One nearby town completed a franchise with WOW, which has never built any portion of the system for which they contracted. Saint Charles negotiated in good faith throughout the time WOW was interested in discussions with the City, eventually receiving from WOW a draft franchise agreement. However, during our review of the draft agreement, when telecom investments fell out of favor in the marketplace, WOW terminated communications with the City. The City's exercise of due diligence, common sense and considered investigation of the financial viability of a potential competitive provider, guided by the public interest, allowed Saint Charles to avoid entering into an injudicious contract for use of public property. It was disappointing that market forces functioned to remove a competitive provider with which the City could pursue discussions of an overbuild.

SBC: Southwestern Bell (SBC), the regional Bell operating company serving the City, approached the City through the Mayor and the Director of Economic Development in July, 2005, about provision of IPTV multichannel video service in a new, dense relatively upscale, residential development area of the City. The City and SBC conducted several meetings and discussions over two or three months to work out details of an agreement to use public rights-of-way for this service. The City contracted with a nationally experienced consultant attorney to facilitate the development of this contract. In these negotiations, the City's proposed regulatory and fiscal requirements were the same or similar to those negotiated with the current cable operator, although the document itself was not to be a "franchise" per se. This was done to ensure that there was a level playing field for similarly situated service providers and to ensure that residents, regardless of which competitor they chose, would have local assistance to help resolve problems arising from construction of system plant, billing problems and customer service issues.

The option of awarding a cable franchise under our regulatory code, adapted to SBC's specific needs, which could have been done in two or three months, was summarily dismissed by SBC because it was a cable franchise. As more details of an agreement were discussed, SBC began advocating for more advantageous terms than those in place for the incumbent cable operator, such as requesting that the franchise be perpetual.

One of our concerns with SBC was its reluctance to agree to provide the government access channel, so that regardless of provider any resident of Saint Charles would have access to the public information and health, safety and welfare programming carried on the channel. As pointed out above, our government channel is essential for public safety. Although SBC would tell us verbally that they would provide such a channel, they would never agree in writing to do so. For example, they would only agree to provide such a channel if it was "reasonable" to do so, with the franchise or contract to state that reasonableness was to be determined by them in their sole discretion. They insisted on similar "reasonableness to be determined solely by them" language on whether they would install a connection to City Hall to obtain the feed for the government channel; unlike the provisions of the City's Cable Television Master Regulatory Code which includes "(2) The facilities and equipment necessary for the activation of such channels..." as part of the definition of these access channels. Variant language is not acceptable when our Community Needs Assessment specifically showed that a government channel was necessary to permit our residents to observe and participate in local government. It is particularly not acceptable when, as noted above, we (like many communities) use the

government channel for emergency communications. SBC also objected to paying a franchise type fee for more than three years. No further negotiations have occurred since September/October.

Conclusions

The local cable franchising process functions well in Saint Charles. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. The City believes that the same considerations would be extended to any service provider who is delivering adequate services to our residents.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected. The City believes that the franchising process provides the best mechanism for continuing these assurances and extending them to any service provider.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create or use Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users. The City believes that the franchising process provides the most cost effective way to guarantee that local considerations are regarded appropriately, in the best interests of our citizens.

The City of Saint Charles, Missouri, therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

CITY OF SAINT CHARLES, MISSOURI

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EXHIBIT 1

§ 111.22 GRANT OF ADDITIONAL FRANCHISE AND COMPETING SERVICE.

Since competing or overlapping franchises may have an adverse impact on the public rights-of-way, on the quality and availability of services to the public and may adversely affect an existing operator's ability to continue to provide the services and facilities it is presently providing under a franchise, the City may issue a franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community. In considering whether to grant one or more additional franchises, the City shall specifically consider, and address in a written report, the following issues:

- (A) The positive and/or negative impact of an additional franchise on the community.
- (B) The ability and willingness of the specific applicant in question to provide cable services to the entire franchise area which is served by the existing cable operator. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms which when taken as a whole do not give a competitive advantage to one Grantee over another.
- (C) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.
- (D) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed cable system for the duration of the franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed system are available.
- (E) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.
- (F) The experience of the applicant in the erection, maintenance, and operation of a cable television system.
- (G) The capacity of the public rights-of-way to accommodate one or more additional cable systems and the potential disruption of those public rights-of-way and private property that may occur if one or more additional franchises are granted.

(H) The disruption of existing cable television service and the potential that the proposed franchise would adversely affect the residents of the City.

(I) The likelihood and ability of the applicant to continue to provide competing cable television service to subscribers within the entire franchise area for the duration of the franchise.

(J) Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping franchise.

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